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Supreme Court of the United States

October Term, 1939.

No. 7.

HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, Trustees, etc.,

Petitioners,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF ON BEHALF OF PETITIONERS.

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BRIEF ON BEHALF OF PETITIONERS.

I.

Opinions of the Courts Below.

The Memorandum Decision of the District Court (with Findings of Fact and Conclusions) is not reported but is printed in the Record (R. 22-27). The majority and minority opinions of the Circuit Court of Appeals for the Second Circuit are reported in 101 F. (2d) 48 (R. 101-108).

II.

Jurisdiction of This Court.

This Court granted petitioner's application for a writ of certiorari on March 27, 1939 (R. 109) 306 U. S. 627.

III.

Statement of the Case.

In 1893, the New York, New Haven and Hartford Railroad Company leased the properties of Old Colony Railroad Company[1] for a term of 99 years. The lease included the properties of the Boston and Providence Railroad Corporation,[1] which the Old

[1] The Old Colony consists of about 575 miles of railroad principally in the southeastern part of Massachusetts, and the Boston and Providence has 58 miles of line running principally between Boston and Providence (R. 44, 45).

Colony had leased in 1888 (R. 32). On October 23, 1935, the New Haven filed a petition in the United States District Court for the District of Connecticut for reorganization under Section 77 of the Bankruptcy Act[2] which was duly approved (R. 1). Local passenger service in and out of Boston was highly unprofitable and surveys by the Trustees of the New Haven indicated that Old Colony's operations (largely consisting of this local passenger service) were resulting in operating deficits of approximately $2,000,000 per year before rental charges of over $2,500,000 (R. 45). As a result the New Haven Trustees rejected the lease on June 1, 1936, and on June 3 the Old Colony Railroad Company itself filed in the same court a petition for reorganization under Section 77 (R. 32, 45). The District Court thereupon appointed as trustees of the property of Old Colony the same persons who had been appointed trustees of the New Haven's property. Since June, 1936, they have operated the property of Old Colony for its own account (R. 33, 34, 45).

On December 28, 1937, the Trustees applied to the Department of Public Utilities of Massachusetts for its approval of the abandonment of 88 local passenger stations. The Trustees advised the Department of time-tables proposed to be effective March 27, 1938, which contemplated the discontinuance of certain trains and re-arrangements in train service. Hearings were not begun until February 23, 1938. In the District Court, the Commonwealth of Massachusetts asked for and obtained a stipulation on the record that the hearings before the Department had not been completed (as of July 8, 1938), and might not be completed for a considerable time in the future, and that no order had been entered upon the application (R. 76).

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[2] Act of August 27, 1935, c. 774, 49 Stat. 911; June 26, 1936, c. 833, 49 Stat. 1969, 11 U. S. C. A. s. 205.

History of Proceedings Relating to Order No. 289.

Old Colony, debtor, and representatives[3] of its security holders interested in the formulation of plans of reorganization, filed in the District Court on June 20, 1938, a petition (for Order No. 289, R. 3-9) which recited facts conclusively showing that Old Colony was being operated at substantial losses and that the capital and assets of Old Colony were being consumed by unprofitable local passenger operations which endangered the continuance of all service, were confiscatory to the interests of its creditors and shareholders, and would impede the carrying out of any reorganization of Old Colony (R. 7, 8). The petition prayed that the Court direct the Trustees to effect economies in Old Colony passenger operations, reciting that as early as January 19, 1937, the Old Colony security holders requested the Trustees to institute such economies and referring in detail to the long drawn out proceedings before the Massachusetts Department of Public Utilities (R. 5, 6).

The Trustees filed an answer admitting the necessity of effecting economies and recommending changes in operations substantially in accordance with the application pending before the Department of Public Utilities. The Commonwealth of Massachusetts filed an appearance (R. 22) but did not answer, did not at any time deny any allegation of the petition or of the Trustees' answer, offered no proof, and cross examined no witnesses. "The Commonwealth does not question the facts found by the judge * * *" (R. 103).

After hearings the Court on July 9, 1938, ordered the Trustees "as promptly as possible to make effective" certain operating economies recommended by them (R. 27). These economies were embodied in

[3] The petitioners, also petitioners for the writ of certiorari herein, were Mutual Savings Bank Group Committee on New Haven Railroad Bonds, Protective Committee of the Shareholders of Old Colony Railroad Company, and Old Colony Railroad Company, Debtor (R. 3, 4). It is to be noted that the petition for Order No. 289 was not filed by the Trustees.

schedules in the form of time-table changes, annexed as Exhibit A to the Trustees' answer, affecting service on the lines of Old Colony, Boston and Providence and the so-called New England Railroad.[4] The schedules eliminated all stops at 88 stations in Massachusetts and 5 in Rhode Island (R. 74, 75; Exhibit 13, at R. 84, 85) and by the Order the Trustees were authorized in their discretion to discontinue these stops, totaling 141,057 stops per annum (R. 69-71). All the proposed changes were effected (R. 88, par. 8).

Massachusetts appealed on the sole ground that the District Court had no jurisdiction to enter Order 289 (R. 86-89). The Circuit Court of Appeals reversed the Order in a two to one decision (R. 101-109).

Thereupon the Trustees and the original petitioners filed with this Court a petition for a writ of certiorari which was granted on March 27, 1939 (306 U. S. 627).

The Findings and Conclusions of the District Court.

Judge Hincks' principal findings of fact (R. 23-25) were as follows:

1. On account of the operation of the owned and leased lines of Old Colony from October 24, 1935, to December 31, 1937, the Old Colony estate had been charged with $11,789,037 as a lien prior to its mortgage. Of this sum $5,775,650 represented the deficit in the operation of property *owned* by Old Colony.

2. For 1937 the deficit in net railway operating income of Old Colony's *owned* property was $2,360,862, the freight service resulting in a profit of $275,278 and the passenger service in a deficit of $2,636,140. In 1938 the deficit was increasing at an even greater rate.

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[4] Lines owned by the New Haven Railroad subject to the lien of the New England Railroad Company Consolidated Mortgage (R. 11, par. 1 (a)).

3. Highway competition, principally from privately owned automobiles, had caused a substantial and progressive reduction in the passenger traffic of Old Colony.

4. By the elimination of 93 passenger stations, 88 of which were in Massachusetts, and by changes in train service, and by other economies that would thereby become possible, the deficit in operations accruing against Old Colony's *owned* properties alone could be reduced by over $658,899 annually.[3]

Upon the whole record, Judge Hincks came to the following conclusions (R. 25-27):

1. The greater part of the reduction in passenger traffic by rail in the affected area is permanent.

2. "The reorganization of the Old Colony cannot be accomplished without the operating changes contemplated * * *

"* * * For about three years these properties have been operated by the court through its trustees and during that time every practical means of increasing traffic revenues has received careful consideration. Notwithstanding, it has proved impossible to operate on the basis of present service without a deficit. At the same time, an equal attention to the reduction of operating costs and taxes has proved ineffective to eliminate the deficit. Railroad labor is the largest single item of cost and it is impracticable, if not impossible, to negotiate for lower labor rates upon these lines independently of negotiation on a national scale. The emergency now existing on these lines will not permit of the delay and uncertainty inherent in such a program. Thus the only alternative is the elimination of service which fails to attract sufficient patronage to be self-supporting."

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[3] For details as to savings, see *infra*, page 7.

3. "Continuation of passenger service upon the present basis will jeopardize the ability of Old Colony to render freight service which is indispensable to the territory served. A privately-owned railroad cannot operate without capital, and Old Colony capital is now being depleted at a rate exceeding $10,000 per day."

4. "The changes sought are in the public interest.

"* * * the public interest in the long run will best be served by a policy which is calculated to protect indispensable freight service and to preserve that portion of the passenger service which is shown by experience to be the more vital rather than a policy which is daily bringing nearer the destruction of the entire enterprise."

5. "Failure to grant the relief sought would result in the confiscation of private property."

The Evidence Presented at the Hearing.

The findings of fact and conclusions of the District Judge (R. 23-27) are abundantly justified by the evidence, all of which was uncontradicted. The evidence shows that 95% of the passenger traffic handled in southeastern Massachusetts, the territory principally affected by the Order, moves to and from Boston; that between 1929 and 1936, Old Colony lost 57% of that passenger traffic; that this substantial decline was due to highway competition, principally from the privately owned and operated automobile; and that the changed conditions are permanent (R. 54-58, 61, 63, 64).

Accounts prepared according to methods approved by the Interstate Commerce Commission (R. 45) show that Old Colony and Boston & Providence were both incurring substantial operating deficits. For example, Exhibits 2 and 3 (R. 77-79) show that the net

railway operating *deficits* (*i. e.*, operating income before any fixed charges and before certain substantial intra-system charges) were as follows:

	Year Ended May 31, 1937	Calendar Year 1937
Old Colony	$1,867,554	$2,360,862
Boston & Providence	641,227	1,138,248

Tentative figures for the first six months of 1938 show that these ruinous deficits were continuing at an even greater rate (Exhibit 7, R. 80).

These losses were due solely to local passenger service (R. 47). The passenger operating ratio was 172½, or, in other words, operating expenses exceeded $1.70 for every dollar of revenue (R. 48). This depletion of funds seriously affected the cash balance of the New Haven, which it was estimated would be, on October 31, 1938, only $1,182,000, a figure far below the danger point (R. 53, 12, 13). Old Colony itself had no cash balance or other liquid assets (R. 52), and deficits incurred in its operation were advanced from funds of the New Haven, whose Trustees were operating Old Colony for its own account (R. 36, 37, 52).

It was shown by expert testimony that the changes covered by Order No. 289 would effect annual direct savings as follows:

Old Colony (excluding leased lines)	$658,899.
Boston & Providence (leased line)	220,139.
Other New Haven lines	134,385.
Total	$1,013,421.

plus certain direct and indirect savings. The savings accruing to other lines of the New Haven arise from incidental changes necessary on lines of the New Haven that are operated in a manner closely related to local passenger operation on the Old Colony. The changes and economies could not be effected on the Old Colony properties without making such incidental changes (R. 24, Exhibit 12 at R. 84, 72-75, 66).

The problem of these passenger losses had been the subject of careful and thorough consideration over an extended period, and numerous studies and surveys aimed at its solution were made by the Trustees (R. 5, 11, 14-21, 38-44, 45-52; Exhibit 2 at R. 77, 78; Exhibit 3 at R. 78, 79; Exhibits 4 and 7 at R. 80). These studies demonstrated that the proposed changes were reasonable and were the only possible course (R. 49, 58, 59, 69, 70, 26). An emergency existed. As Professor Cunningham testified (R. 64, 65):

> "The operating deficits, without taking into account the segregation study below-the-line items, namely a charge for moving company fuel, and interest charges on value of equipment and facilities belonging to other parts of the system but used in part by the Old Colony—the operating deficit last year was $2,320,000 in round figures. The accrued charges by the New Haven Estate against the Old Colony as of December 31, 1937, was over $11,000,000. These heavy charges and the current deficits which during the first six months of 1938 is approximately 30% more than in 1937. * * *
>
> "* * * The continuing deficits in effect are consuming the Estate of the Old Colony and eventually these prior claims will be in excess of the investment value of the property.
>
> "A real emergency exists which requires immediate and effective corrective action. Such action has already been too long deferred. The Savings Bank Committee recognized the danger a year and a half ago, and urged the Trustees to act at that time. It is my opinion that if these ruinous losses are not substantially reduced, the territory served by the Old Colony Railroad will be faced by the probability of complete abandonment of all rail service, both freight and passenger."

During the period of the hearings before the Department of Public Utilities between February and June, 1938, operating deficits were accumulating at the rate of $15,000 to $16,000 daily (R. 53). Such heavy operating losses constitute the most serious obstacle to successful reorganization of Old Colony (R. 64).

IV.

Question Presented.

Whether the bankruptcy court had, by virtue of Section 77 of the Bankruptcy Act or otherwise, power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, where the discontinuance of such service would be necessary to accomplish reorganization under Section 77 and where the continuance of such service would result in losses for the railroad as a whole so great as to be confiscatory.

V.

Argument.

Summary of the Argument.

POINT I.

Under Section 77 the bankruptcy court has the power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, in order to preserve the property of an interstate railroad and to bring about its rehabilitation, so as to make possible the formulation of and to effect a plan of reorganization.

POINT II.

Order No. 289, here under review, was necessary to preserve and prevent waste of the property of an interstate railroad and to bring about its rehabilitation, in order to make possible the formulation of and to effect a plan of reorganization.

POINT I.

Under Section 77 the bankruptcy court has the power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, in order to preserve the property of an interstate railroad and to bring about its rehabilitation, so as to make possible the formulation of and to effect a plan of reorganization.

The sole purpose of Section 77, enacted in the interest of assuring an adequate national transportation system, is the reorganization of financially embarrassed interstate railroads. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 676. In order to accomplish this purpose Section 77 contains comprehensive provisions for the administration of the properties and business of the debtor, pending reorganization, and for the development and execution of a plan of reorganization. In order to render Section 77 effective—to attain its sole object of reorganization under a satisfactory plan without undue delay—it is necessary in the course of administration that the property of the debtor in the custody of the court be protected against depletion by the elimination of properties and operations, including intrastate passenger service, which occasion undue loss. The immediate question is whether the court had the power to direct its trustees to discontinue such intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction. An analysis of the statute makes it clear that the court has this power, particularly when recourse to a state regulatory body would hamper administrative acts necessary to accomplish reorganization. Any other construction is fundamentally unsound.

Power of the Court Under the Provisions of Section 77 for the Operation of the Properties and Business of the Debtor, Pending Reorganization.

Section 77 provides that the operation of the properties and business of the debtor, pending reorganization, shall be carried on by the trustees, subject to two express limitations: control by the judge, and jurisdiction of the Interstate Commerce Commission when and as provided by the Interstate Commerce Act.

Subdivision 77 (a) provides that the court, for the purposes of the Section, shall have *exclusive jurisdiction* of the debtor and its property, and the power of a Federal court if it had appointed a receiver in equity of the property of the debtor. It, therefore, contemplates prompt action by the court acting alone, exclusive of any state regulatory body, in order to attain reorganization of the debtor.

Subdivision 77 (c) (2) gives the judge control of the trustees in the exercise of their powers as bankruptcy trustees, authority over them in the exercise of their powers as receivers in an equity proceeding and, subject only to the jurisdiction of the Interstate Commerce Commission, control of them in the exercise of their power to operate the business of the debtor. The broad grant of power to the trustees involves an equally broad grant of control by the court, subject to the jurisdiction of the Interstate Commerce Commission. It makes no reference to any state laws or state regulatory bodies as limiting the grant. The express inclusion of but two limitations upon the power of the trustees to operate the business, control by the judge and jurisdiction of the Commission, impliedly excludes any other limitation.

Under subdivision 77 (l) the jurisdiction and powers of the court are the same as if a voluntary petition for adjudication had been filed and a decree entered. By Section 2 of the Bankruptcy Act, courts

of bankruptcy are vested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings * * * to make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act". *Continental Bank* v. *Rock Island Railway, supra*, 294 U. S. 648. Whether in a bankruptcy or an equity receivership proceeding, the court must have the power to protect from invasion and waste the property in its custody.

Subdivision (o) is an express grant of power to the judge to authorize the abandonment or sale of property, subject only to approval of the Interstate Commerce Commission if total abandonment is involved. If a judge may authorize the total abandonment of a railroad, with the approval of the Commission, the judge alone may order partial discontinuance of service, no jurisdiction being expressly reserved to the Commission or any other regulatory body.

Power of the Court Under the Provisions of Section 77 to Carry Out a Confirmed Plan.

The court is also given complete power to accomplish the paramount purpose of the Act of effecting reorganization by the provisions of subdivision (f), which reads in part:

> "Upon confirmation of the plan, the debtor and any other corporation or corporations organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge, *the laws of any State or the decision or order of any State authority to the contrary notwithstanding.*" (Italics supplied throughout brief.)

Section 77 B is significantly different. We quote from the dissenting opinion of Judge Swan in this connection, referring to Section 77 B:

> "The latter expressly provides that if the corporation in reorganization is a utility subject to the jurisdiction of a state regulatory body, the plan of reorganization shall not be confirmed until such state authority has been afforded an opportunity to suggest amendments or objections, subdivision (e) (2), 11 U. S. C. A. §207 (e) (2); nor shall securities be issued without obtaining the consent of state authorities having jurisdiction over such matters, subdivision (f) (7), 11 U. S. C. A. §207 (f) (7). In striking contrast to these provisions, Section 77 (f), 11 U. S. C. A. §205 (f) provides that upon confirmation of the plan it shall be carried out subject to the supervision of the judge, 'the laws of any State or the decision of any State authority to the contrary notwithstanding'" (R. 107).

Judge Swan further says:

> "Nor do I see why control of a State authority should continue up to the date of confirmation, if the confirmed plan may disregard prior orders of the state 'commission'" (R. 108).

Judge Hincks concluded that reorganization of Old Colony could not be accomplished without the proposed operating changes (R. 25), and failure to grant the relief sought would result in the confiscation of private property (R. 26). The majority opinion of the Circuit Court of Appeals held in substance that, in the absence of a finding that it would ultimately defeat any plan to let the deficit accumulate during the period which the Department of Public Utilities might be considering the case, and while its order, if unfavorable, was being reviewed, there was no force

in the argument that "that which is immune from local interference when it comes into existence, must surely be free to be born" (R. 103). It is difficult to reconcile this with *Continental Bank* v. *Rock Island Railway, supra,* 294 U. S. 648, where the District Court granted an injunction restraining secured creditors of a railway from selling collateral which they held as pledgees and where this Court approved the injunction on the ground that sales of collateral might embarrass the formulation and consummation of a plan, although a plan was not yet in the course of preparation.

The majority opinion of the Circuit Court of Appeals rests upon an artificial distinction between state law and regulation with respect to a confirmed plan, and state law and regulation with respect to the administration of the debtor's estate in such a manner as to make possible the preparation and consummation of a plan. The distinction is artificial because it disregards the fact that the reorganization of a financially embarrassed railroad is not the act of a moment. Reorganization depends upon the creation of a sound operating basis for the properties. State law should exert no greater influence upon the administrative steps essential to the formulation of a plan than upon the execution of the plan itself. Administration and ultimate reorganization are closely related, are interdependent. It would be hard to say, for instance, that the administrative charges against the Old Colony for the period October 23, 1935, to December 31, 1937, of some $11,000,000 (see R. 65), largely made up of its own operating deficits and of those of its leased lines, would not defeat reorganization. On the other hand, a step which would reduce the annual deficits by $658,899 a year would tend to accelerate reorganization.

In the *Rock Island* case, *supra,* involving rearrangement of the capital structure, this Court approved the prevention by court injunction of outside interference. In the case at bar, involving rehabili-

tation of the properties, the necessities for action by the court are even greater. We submit, therefore, that the distinction is not only artificial but unsound in principle.

The court not only has jurisdiction to protect the property within the period of administration but also the duty to expedite the proceedings for the sake of reorganization. As the Supreme Court said in the *Rock Island* case, *supra* (p. 685):

> "The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of §77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the duty of the court and of the Interstate Commerce Commission to see that they do. Proceedings of this character, involving public and private interests of such magnitude, should, so far as practicable, be given the right of way both by the court and by the commission, to the end that they may be speedily determined."

This language is especially applicable to delays occasioned by resort to state commissions. If a state commission acts without diligence and speed, it can force delay on the parties and the court and even prevent reorganization.

It will be seen from an examination of Section 77, which constitutes an exercise of the bankruptcy and interstate commerce powers under the Federal Constitution, that there is a complete absence of any pro-

vision for any compliance by the court or its trustees with provisions of state law or with regulations and orders of state regulatory bodies, while the court is engaged in rehabilitating and reorganizing a financially embarrassed interstate railroad. It does not reserve jurisdiction to any state regulatory body with respect to the administration of a debtor's estate or the consummation of a plan. This is not only significant but natural. The problem confronting the Congress when in 1933 it enacted, and in 1935 revised, Section 77 was to provide comprehensively for the speedy and effective restoration of such interstate railroads as useful agencies of interstate commerce. The interstate aspects of such railroads were the important considerations and there was every reason that the Congress should occupy the whole field and legislate without regard to the varying restrictions that the different laws of 48 states might place upon the doing of an adequate, prompt and efficient task of rehabilitation of these interstate agencies. When Congress occupies the field it precludes all inconsistent state regulation, unless specific reservations of state powers are made. *Colorado* v. *United States*, 271 U. S. 153, pages 162-166; *Transit Commission* v. *United States*, 284 U. S. 360; and see *New York* v. *United States*, 257 U. S. 591. The language of Judge Mack in *American Brake & Shoe Foundry Co.* v. *I. R. T.*, 10 Fed. Supp. 512 (D. C. S. D. N. Y. 1935), aff'd without opinion 76 Fed. 2d 1002, cert. den. 295 U. S. 760, is apposite:

> "* * * the question here * * * is in effect, whether the federal court, having already entered upon the administration of an estate, which task it must eventually complete, should remit to the state courts what are important intermediate steps in the administration of that estate * * *" (pp. 521-522).

The dissenting opinion in the Circuit Court of Appeals correctly states the construction of Section 77 on the point involved in this case:

> "To my mind these provisions indicate not only that the putting into effect of a confirmed plan of reorganization is not to be hampered by state regulatory authorities but also that the conduct of the debtor's business prior to confirmation is to be under the exclusive jurisdiction of the district judge, except where resort to the Interstate Commerce Commission is expressly required. One of the chief reasons for enactment of the statute was to provide a more expeditious method of reorganization than was afforded by the old receivership procedure. Continental Illinois Nat. Bank & Trust Co. v. Chicago Rock Island & P. Ry. Co., 294 U. S. 648, 685. If resort to state regulatory bodies were necessary, undesirable delay might well result, as it has in this very case. Nor do I see why control by a state authority should continue up to the date of confirmation, if the confirmed plan may disregard prior orders of the state commission. The district judge has found that no plan could be confirmed unless the proposed reduction of service were made, and that the failure to grant the relief asked would result in confiscation. These findings are not challenged. Hence, enforcement of an order by the state commission refusing the proposed reduction of service could be enjoined. Mississippi Railroad Comm. v. Mobile & Ohio R. R. Co., 244 U. S. 388. Under such circumstances, at least, it would seem reasonable to hold that the court of bankruptcy has jurisdiction to protect the res within its custody by curtailing a confiscatory service" (R. 107-108).

The Power of the Court as Established by the Cases.

The decision of the Circuit Court of Appeals in the case at bar denies to the bankruptcy court the power to protect property in its custody, a power which this Court has long held to exist in cases of equity receivership.

> *In re Tyler*, 149 U. S. 164 (property in possession of receiver not subject to seizure to enforce collection of state tax);
>
> *Wabash Railroad* v. *Adelbert College*, 208 U. S. 38 (state decree to sell bonds invalid);
>
> *Central Trust Co.* v. *Anderson County*, 268 U. S. 94 (federal court can disregard prior state decree as to location and maintenance of certain railroad property in custody of receiver).

Furthermore, the same power was recognized in cases arising under the Bankruptcy Act generally, prior to the enactment of Section 77. *Murphy* v. *Hofman Co.*, 211 U. S. 562; *Isaacs* v. *Hobbs Tie & T. Co.*, 282 U. S. 734. All of these cases proceeded upon the fundamental power of the court to protect from invasion the property in its custody.

Two decisions of this Court under Section 77 have followed the philosophy and principles involved in the earlier equity and bankruptcy cases.

In *Ex parte Baldwin, et al.*, 291 U. S. 610, this Court held that the bankruptcy court had exclusive jurisdiction to prevent interference with property in its custody. Mr. Justice Brandeis said that a court of bankruptcy may issue an injunction to protect its jurisdiction from interference, that the power was not peculiar to bankruptcy courts but an applica-

tion of the general principle that where a court of competent jurisdiction has taken property into its possession the property is withdrawn from the jurisdiction of other courts. "Having possession * * * the court * * * is entitled to determine all questions respecting the same" (p. 615).

It was held in *Continental Bank* v. *Rock Island Railway, supra*, 294 U. S. 648, that the district court could grant an injunction pursuant to Section 77 restraining secured creditors of a railroad in the process of reorganization from selling collateral which they held as pledgees. It was urged that Section 77 gave no express or implied power to grant the order (the same line of argument advanced here by the respondent), that it could not be granted in ordinary bankruptcy proceedings, and that the Reconstruction Finance Corporation Act (47 Stat. 5, c. 8, §5) expressly empowered the Reconstruction Finance Corporation to liquidate the collateral. But this Court said that Section 77 seeks to bring about a reorganization, if a satisfactory plan can be devised (p. 676); that the power to enjoin the sale is found in the object of Section 77—"to bring about a reorganization" (p. 676); and that although no plan was even in the course of preparation, sales of collateral would have embarrassed the formulation and consummation of a plan, and might have changed its detail (pp. 678, 679, 685). "And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile" (p. 676).

These two decisions, while not involving the precise question here presented, show that this Court has adopted a construction of Section 77 sufficiently broad to bring about the fulfillment of its objects. The Circuit Court of Appeals has here construed Section 77 so narrowly as to defeat these purposes.

The Circuit Court of Appeals for the Eighth Circuit also has held in *Board of Directors St. Francis Levee Dist.* v. *Kurn*, 91 F. (2d) 118 (1937), cert. den. 302 U. S. 750; and *Board of Directors St. Francis Levee Dist.* v. *Kurn*, 98 F. (2d) 394 (1938), cert. den. 305 U. S. 647, that the bankruptcy court had full power to protect the property of a railroad in reorganization under Section 77 from process in the state courts to enforce tax liens and full jurisdiction to adjudicate the validity and extent of all tax claims and liens.

Although under Section 77, the precise question here involved has not arisen, relief much like that involved in Order No. 289, has been granted in cases involving equity receiverships in circumstances very similar to those here involved.

In *Crawford* v. *Duluth Street Ry. Co.*, 60 F. (2d) 212 (C. C. A. 7 1932), the City of Superior and the State of Wisconsin appealed from the district court's order authorizing the abandonment of certain lines of a street railway by its receiver, without further awaiting action by the city council. The receiver had presented a petition for permission to discontinue operations on certain branch lines to the mayor and council who had held public hearings upon the petition but who had neither granted nor denied the petition. The Circuit Court of Appeals for the Seventh Circuit held that the district court could properly authorize the abandonment of service where the losses involved in such service were so substantial as to endanger the operation of the system. In that case, as in the case of the Old Colony, the entire system was being operated at a loss, caused by the passenger service on three branch lines and the court recognized that relief was essential and could not be delayed pending possible action by the state regulatory body. Otherwise there would be a deprivation of rights under the Constitution.

The majority opinion of the Circuit Court of Appeals in the instant case cites this decision but attempts to distinguish it on the ground that the plaintiff there had pleaded that the city council would not entertain their petition, although the opinion admits that the court in the *Duluth* case did not put the result on that ground.[6]

The distinction seems inadequate in view, not only of the facts of *Duluth* case, but of the stipulation (R. 76) entered into in the case at bar, that "the hearings (before the Massachusetts Department of Public Utilities) have not been completed and may not be completed for a considerable time in the future". The significant fact is that in both the *Duluth* case and the case at bar the District Court acted to preserve the estate in its custody from depletion without reference to a state regulatory body.

State of Iowa v. *Old Colony Trust Co.*, 215 Fed. 307 (C. C. A. 8, 1914), was a suit to foreclose a mortgage. The federal court directed the receivers to abandon a stretch of railroad. The State of Iowa and others appealed on the ground that under the state statute the state court only had jurisdiction. The Circuit Court of Appeals held that the federal district court had the power to make the order. We shall discuss later (Brief, p. 26) the suggested distinction made by the majority opinion in the case at bar, based on the difference between a court and a specialized regu-

[6] The only finding of the district court relating to the inaction of the council appears in the record in that case at page 155:

"7. That the Receiver filed a petition with the City of Superior, Wisconsin, on November 5, 1930, for permission to abandon street railway operations and remove the equipment thereof from the branch lines of said system hereinabove designated; that the Mayor and Common Council of said City had public hearings upon said petition and had said matter for consideration before its council meetings, but has not acted upon the same and said petition has neither been granted nor denied."

latory tribunal. The Circuit Court of Appeals in the *Iowa* case reached its conclusions without benefit of Section 77, by virtue of the inherent power of the court to prevent depletion of property in its hands.

The Legislative History of Section 77 Shows Its Broad Purpose.

The broad purpose of Section 77 is shown plainly by its Congressional history.[7] That history in itself supports the construction urged in this brief that, in framing a statute designed to facilitate and expedite interstate railroad reorganizations in a widespread crisis in the railroad industry, Congress conferred jurisdiction upon the court, free from state laws and state regulations that interfere with reorganization. In 1933 Congress was confronted with a national transportation crisis, as is shown, for example, by the statement of Representative Rayburn while discussing a bill which was the basis of the 1933 enactment (76 Cong. Rec. 2917; 72nd Cong., 2d Sess.):

> "The proposed section 76 of this bill has been drawn to meet what, in my judgment, is an emergency. I am informed that several important railroad companies and a number of smaller ones face inevitable receivership within the next few months * * *."

[7] As to the legislative history of Section 77, see generally 76 Cong. Rec. (72nd Cong. 2nd Sess.), pages 2902, 2908, 2917, 4880, 4884, 4907, 5107, 5117, 5136, 5350, 5360; 79 Cong. Rec. (74th Cong. 1st Sess.), pages 13302-13309; Craven and Fuller "The 1935 Amendments of Railroad Bankruptcy Law", 49 Harvard Law Review 1254, 1259; Friendly "Amendment of the Railroad Reorganization Act", 36 Columbia Law Review 27-59; Simpson, "Fifty Years of American Equity", 50 Harvard Law Review 171, 191, 192; Lowenthal "The Railroad Reorganization Act", 47 Harvard Law Review 18-58.

The proposed legislation was looked upon, not only as a form of bankruptcy enactment, but, in part at least, as a regulation of interstate commerce, for in discussing an early form of the Bill, Representative Summers, Chairman of the House Judiciary Committee, said (76 Cong. Rec. 2908; 72nd Congress, 2nd Session):

> "In the framing of this bill in so far as it relates to intersfate railroad companies, of course, the Congress may act under two powers, the power conferred by the interstate commerce clause of the Constitution and the power conferred by the bankruptcy provision of the Constitution."

The debates relating to this statute and its amendments indicate that Congress intended it as a means of preserving and strengthening the nation's transportation system in the interest of the nation.[8] Representative M Laughlin in the debate on the 1935 amendments to the Act, said (79 Cong. Rec., p. 13301):

> "It is the earnest hope of the committee that this bill, when enacted into law, will facilitate receiverships, bring about sound reorganizations, and strengthen the railroads of this country."

The terms of the Act, both as orginally enacted and as amended; support this view. The only persons now eligible for reorganization under the statute are defined by subdivision (m) of the Act as "any common carrier by railroad engaged in the transportation of persons or property in interstate commerce". Furthermore, as has been stated above,

[8] Compare the broad construction accorded the Transportation Act of 1920 to effectuate this same purpose:
New England Divisions Case, 261 U. S. 184, 189;
Dayton-Goose Creek Ry. v. United States, 263 U. S. 456, 477;
Colorado v. United States, supra, 271 U. S. 153.

various provisions of the Act are related to provisions of the Interstate Commerce Act.

Had Congress intended to impose the additional requirement of compliance with all valid state laws or to subject the operation of the debtor's business to the jurisdiction of the state regulatory commissions, regardless of conflict with the administration of the bankruptcy estate, it could easily have done so. That it did not so intend is borne out by the fact of the significant rejection of an all inclusive amendment during the debate in Congress at the time of the original passage of Section 77. This provided as follows:

> "All existing laws relating to railroads or railways engaged in interstate commerce shall be applicable to any trustee appointed and operating a railroad or railway pursuant to this section" (76 Cong. Rec., pp. 5118 *et seq.*).

From the debates in Congress and from the economic history of the times, we conclude that Congress intended to clothe the courts with adequate jurisdiction to promote reorganization proceedings and to protect and promote interstate commerce, reserving jurisdiction solely to the Interstate Commerce Commission and only where expressly reserved.

Section 65 of the Judicial Code Is Inapplicable.

Reference was made at the end of the majority opinion in the Circuit Court of Appeals (R. 105, 106) to Section 124 of Title 28, of the United States Code, usually referred to as Section 65 of the Judicial Code. Under Section 65 the receiver or manager in possession of any property must manage and operate it according to the requirements of the valid laws of the state in which such property is situated, "in the

same manner that the owner or possessor thereof would be bound to do if in possession thereof."

The provisions of this Section, however, are inapplicable to the case at bar.

In the first place Section 65 presupposes the inherent power of a court to preserve the property in its custody. The situation in the case at bar plainly involves the well-settled exception to the application of Section 65, that a court of equity can protect such property from confiscation or depletion. *In re Tyler, supra*, 149 U. S. 164; *Crawford* v. *Duluth, supra*, 60 F. (2d) 212; and see *Fidelity Title & Trust Co.* v. *Kansas Natural Gas Co.*, 219 Fed. 614 (D. C. Kansas, 1913); *Franklin County* v. *Public Utilities Commission*, 107 Ohio St. 442 (1923).

Sections 66 and 265 of the Judicial Code (28 U. S. C. A. §§125 and 379) offer analogies. The former provides that receivers shall be subject to suit in the state courts, but it has been held that where the court's jurisdiction over property in its custody is threatened by a suit in a state court, the latter is without jurisdiction. *American Brake Shoe & Foundry Co.* v. *I. R. T., supra*, 10 Fed. Supp. 512, aff'd without opinion 76 F. (2d) 1002, cert. den. 295 U. S. 760; *Field* v. *Kansas City Refining Co.*, 296 Fed. 800 (C. C. A. 8, 1924), cert. den. 266 U. S. 618; 9 F. (2d) 213, cert. den. 271 U. S. 671. Section 265 provides in similar vein that the federal courts shall not enjoin action by state courts except in connection with bankruptcy cases. Nevertheless, federal equity courts enjoin action which threatens their own jurisdiction based on possession of a receivership estate. *Julian* v. *Central Trust Co.*, 193 U. S. 93.

A second reason exists why Section 65 does not apply. By Section 77 Congress has occupied the field of the control of railroads reorganizing under that section both as an exercise of the bankruptcy power and commerce power, declaring in effect that when a railroad is under Section 77 the trustees may act contrary to state laws if necessary to preserve the estate and to prepare

for and accomplish the fundamental purpose of Section 77—viz. reorganization. That this is so is clear from the express language of Section 77, sub-division (f) permitting the carrying out of reorganization plans, regardless of state laws and the orders of state regulatory authorities. For these reasons this express language of the subdivision, by implication at least, and the language of subdivision (c) (2), relieve trustees under Section 77 of the obligation to comply with the provisions of state law where compliance will impede or delay eventual reorganization.

Still a third reason why Section 65 does not apply is that while "the valid laws of the state", as that term is used in Section 65, may include "decisions" of the local tribunals as well as statutes of the state (*cf. Erie R. Co.* v. *Tompkins*, 304 U. S. 64), Section 65 refers only to those substantive laws which relate to management and operation of railroads, and not to procedural matters relating, as here, to the proper forum, and the steps to be followed, in determining whether particular services should be discontinued. A somewhat similar problem arose in *Board of Directors St. Francis Levee Dist.* v. *Kurn*, *supra*, 91 F. (2d) 718, cert. den. 302 U. S. 750; *Board of Directors St. Francis Levee Dist.* v. *Kurn*, *supra*, 98 F. (2d) 394, cert. den. 305 U. S. 647, where trustees under Section 77 obtained an injunction enjoining a tax district from collecting taxes as the property was in the custody and control of the bankruptcy court and a suit would obstruct orderly reorganization. See also *In re Denver & R. G. W. R. Co.*, 23 F. Supp. 298 (D. C. Col. 1938).

The Bankruptcy Court is the Appropriate Tribunal for the Determination of the Issues Here Presented.

The Circuit Court of Appeals assumed in this case that the bankruptcy court is not an appropriate tribunal for the determination of the issues here presented (R. 105, 106) and distinguished *State of Iowa* v. *Old Colony Trust Co.*, *supra*, 215 Fed. 307. The

distinction is not justified in view of the language used by the court itself earlier in its opinion in that case:

> "We have already seen that on a state of facts such as disclosed by the pleadings and proof in this case any railroad company would have been justified on general principles of the common law in abandoning a part of its road in similar condition to that sought to be abandoned in this case, and without doubt could have received judicial sanction for such abandonment at common law irrespective of any statute" (pp. 313-314).

The bankruptcy court *is specialized* as to matters of the type requiring determination here. Congress has specifically entrusted the court with certain definite administrative powers. Some of these, such as the power to prescribe the keeping of additional accounts [subdivision (c)(2)] the court exercises independently of the Commission. Others, such as the power to supervise the payments of fees [subdivisions (c)(2) and (c) (12)] are independently exercised within the limits prescribed by the Commission, and still others require action both by court and Commission. All are administrative powers, and all are exercised at least in part by the court as a part of the system set up by Congress, and show an intent to make the court, as far as necessary to accomplish the ends of the Section, a specialized administrative agency. Indeed, the court, entrusted with these powers from the inception of these proceedings, has long been familiar with the financial condition of the Old Colony and the New Haven. Therefore, it is clear that the questions here raised are most appropriate for determination by the bankruptcy court, to which Congress has entrusted the administration of the reorganization.

POINT II.

Order No. 289, here under review, was necessary to preserve and prevent waste of the property of an interstate railroad, to bring about its rehabilitation, in order to make possible the formulation of, and to effect a plan of reorganization.

For the period from October 24, 1935, to December 31, 1937, the Old Colony was charged with over $11,000,000 on account of deficits incurred in the operation of its owned and leased lines (R. 23). For 1937 passenger service showed a net railway operating loss of over $2,600,000, and in 1938 the loss was increasing at an even greater rate (R. 23, 24). These devastating losses were the sole cause of the Old Colony operating deficit. The competitive condition producing these losses is permanent (R. 25). The relief actually granted by Order No. 289 is reduction of losses by about $658,000 annually in the Old Colony alone (R. 24). Continuation of the passenger service would jeopardize the freight service (R. 26). In short, no plan for the reorganization of the Old Colony can be formulated or consummated without the operating changes contemplated (R. 25).

It was plainly within the jurisdiction of the court to prevent the further dissipation of these assets and their eventual consumption. It was the plain duty of the court, under Section 77 and general principles of law, to direct the Trustees to put into effect the proposed operating economies.

The delay, past and future, plays an important part. On December 28, 1937, the Trustees applied to the Department of Public Utilities for approval of an abandonment of 88 local passenger stations. The Trustees advised the Department of time-tables proposed to be effective March 27, 1938. Hearings were not begun until February 23, 1938, and although hearings were held from time to time, by the end of

June, 1938, the Department had entered no order. Massachusetts admitted, in the form of a stipulation requested by it, that these hearings might not be completed for a considerable time in the future (R. 5, 6, 76).

The outstanding bonded indebtedness of the Old Colony, exclusive of bonds pledged to secure bank loans, totals $14,348,000, and the bank loans total $1,400,000, secured by $2,100,000 of Old Colony first mortgage bonds (R. 53). Accrued and unpaid interest would substantially increase the total. By December 31, 1937, over $11,000,000 had been charged against the Old Colony on account of operation of the Old Colony system (R. 23). The Old Colony was being charged between $15,000 and $16,000 per day, during each day of the continuance of this operating loss, computed on the basis of the estimated figure for the first half of the year 1938 (R. 53). These deficits are chargeable as a prior lien (R. 4), having priority over the Old Colony mortgage (R. 23). As of May 31, 1938, the Old Colony had $20 in its cash account and no other current assets susceptible of being readily liquidated (R. 52). It is clear that not only was the property interest of the securityholders about to be wiped out but the corpus of the estate was about to be consumed (R. 8, 65) if Order No. 289 had not been issued. The changes contemplated by Order No. 289 were essential. The Order meant a reduction of losses by about $658,000 annually in the Old Colony alone (R. 24). Immediate relief was absolutely necessary in order to afford any degree of protection to the securityholders. Thus the conclusions of Judge Hincks that the reorganization of Old Colony could not be accomplished without the operating changes contemplated and that failure to grant the relief sought would result in the confiscation of private property (R. 25, 26) are abundantly supported.

The narrow construction of Section 77 adopted by the majority opinion of the Circuit Court of Appeals would mean that Old Colony's deficits would continue

until the decisions of the state regulatory body (as to the preservation of the property and as to operating changes essential to eventual reorganization) can be obtained and tested by litigation. It would be impossible for those charged with the duty of expediting plans of reorganization to know what they have to reorganize. Until the plan makers know that certain property can be preserved and that operating losses can be substantially eliminated a plan of reorganization is impossible. Unless the operation is reduced to produce a net, liquidation, rather than reorganization, looms as a possibility. Such a narrow construction defeats the very object of Section 77.

The facts in the case at bar emphasize the absolute need for a broad construction in order to effectuate the purpose of the Act. The reorganization of the Old Colony can be accomplished only through the intermediate step of rehabilitation, promptly made and on a sound basis. In that way only can the Old Colony and, indeed, many other financially embarrassed railroads be preserved as carriers of interstate traffic. In that way only can a very considerable part of the national transportation system of the country be preserved.

CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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Appendix.

Article I, Section 8 of the Constitution of the United States reads in part as follows:

> "The Congress shall have power * * *
>
> To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States."

Section 77(a) of the Bankruptcy Act, 11 U. S. C. A. §205(a) reads in part as follows:

> "* * * If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. * * *"

Section 77(c)(2), 11 U. S. C. A. §205(c)(2) reads in part as follows:

> "* * * The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. * * *"

Section 77(c)(6), 11 U. S. C. A. §205(c)(6), reads as follows:

> "If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect

no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49."

Section 77(f), 11 U. S. C. A. §205(f) reads in part as follows:

"* * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding * * *."

Section 77(j), 11 U. S. C. A. §205(j) reads in part as follows:

"In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *."

Section 77(l), 11 U. S. C. A. §205 (l), reads as follows:

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same

as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 77(o), 11 U. S. C. A. §205(o) reads in part as follows:

"The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. * * *".

Section 2 of the Bankruptcy Act, 11 U. S. C. A. §11, reads in part as follows:

"The courts of bankruptcy as defined in the previous chapter, viz., the district courts of the United States in the several States, * * * are made courts of bankruptcy, and are invested, within their respective

territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

Section 77B(c) (2) of the Bankruptcy Act, 11 U. S. C. A. §207(c) (2) reads as follows:

"In case the debtor is a utility subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, a plan of reorganization shall not be confirmed until (a) it shall be submitted to each such commission or authority having regulatory jurisdiction over the debtor, (b) an opportunity shall be afforded each such commission or authority to suggest amendments or objections to the plan, and (c) the judge shall consider such amendments or objections at a hearing at which each such commission or authority may be heard. In case the debtor is a public utility corporation wholly intrastate in character no court shall approve any plan of reorganization if the regulatory commission of such State having jurisdiction over such public utility certifies that the public interest is affected by said plan, unless said regulatory commission shall first approve of said plan as to the public interest therein and the fairness thereof. If said regulatory commission shall not within thirty days or such additional period as the court may prescribe after the submission of a plan to it file said certificate it shall be deemed that the public interest is not affected by said plan."

Section 77B(f) of the Bankruptcy Act, 11 U. S. C. A. §207(f) reads in part as follows:

> "* * * (7) The debtor, and every other corporation, issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to take all action necessary to carry out the plan, and that, in case the debtor is a utility corporation subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, all authorizations, approvals, or consents of each such commission or authority required by the laws of such State or States, have been obtained."

Section 65 of the Judicial Code, 28 U. S. C. A. §124, reads:

> "Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than $3,000, or imprisoned not more than one year, or both."

Section 66 of the Judicial Code, 28 U. S. C. A. §125, reads as follows:

> "Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be sub-

ject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice."

Section 265 of the Judicial Code, 28 U. S. C. A. §379, reads as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Section 128 of Chapter 160 of the Massachusetts General Laws (Ter. Ed.) reads as follows:

> "A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station, unless it is relocated under the following section, nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad, except with the written approval of the department after notice posted in and on said station for a period of thirty days immediately preceding a public hearing thereon."

Section 129 of Chapter 160 of the Massachusetts General Laws (Ter. Ed.) reads as follows:

> "A railroad corporation may relocate passenger stations and freight depots, with the written approval of the department and of the board of aldermen of the city or the selectmen of the town where such stations or depots are situated."

Section 16 of Chapter 159 of the Massachusetts General Laws (Ter. Ed.) reads as follows:

> "If the department is of opinion, after a hearing had upon its own motion or upon complaint, that the

regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The department may after such a hearing, order any railway company to build and operate any just and reasonable extensions of its lines for which it may have been or may be granted locations and order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the department shall prescribe, by electric power instead of steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees."

Section 5 of Chapter 25 of the Massachusetts General Laws (Ter. Ed.) reads in part as follows:

"When so requested by any party interested, the commission, or any member or members acting for

the commission, shall rule upon any question of substantive law properly arising in the course of any proceedings before the commission or any member or members thereof, and any party in interest aggrieved by such ruling may object thereto, and may secure a review thereof as hereinafter provided. Any failure or refusal of the commission, or of any member or members thereof acting for the commission, to rule upon such a question at the request of any party in interest as aforesaid within ten days after such request, shall be taken and recorded as a ruling adverse to the party requesting the ruling.

"The supreme judicial court shall have jurisdiction in equity to review, modify, amend or annul any ruling or order of the commission, or of any member or members representing the commission, but only to the extent of the unlawfulness of such ruling or order * * *."